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Letter dated 21 November 2008 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and the Prosecutor (see annex II) of the International Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I should be grateful if you would transmit these assessments to the members of the Security Council.

(*Signed*) Patrick **Robinson**
President

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Annex I

[Original: English and French]

Assessment and report of Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004)

1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph six of the resolution, requested the International Criminal Tribunal for the Former Yugoslavia ("International Tribunal") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the International Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".[1]

I. Introduction

2. Out of the 161 Accused indicted by the International Tribunal, only five Accused remain in the pretrial stage awaiting the commencement of their trials. With two Accused, Župljanin and Karadžić, having been arrested during the reporting period, only two Accused, Mladić and Hadžić, are still at large. A total of 26 Accused are presently in the course of trial and another 10 have appeals pending. All other cases have been completed. It is presently estimated that all but five of the International Tribunal's pending trials will be completed by the end of 2009. The trials of the four most recently arrived Accused are estimated to finish during the course of 2010, and as reported previously, due to slippage in the *Prlić et al.* multi-accused case, it is currently estimated that this trial may also run into 2010. However, while all efforts are being made to complete all trials as quickly and efficiently as possible, it now appears overly optimistic to claim that all appeals can be concluded during 2011, and it is likely that a small number will spill over to 2012. This estimate is clearly also subject to a number of factors that can impinge on the expeditious completion of trials and appeals such as illness of the accused, as well as failure of witnesses to appear and other similar unforeseen circumstances.

3. The three Trial Chambers of the International Tribunal maintained full productivity throughout the reporting period, and for a period of time, eight trials were heard simultaneously, with two separate sittings in each of the International Tribunal's three courtrooms from early morning into the evening. Both the seventh and eighth trial took advantage of the inevitable gaps in the scheduling of the six other cases such as the usual breaks between the close of the Prosecution and opening of the defence case, as well as a number of factors that have caused

[1] The present report should be read in conjunction with the previous nine reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007; S/2007/663 of 12 November 2007; and S/2008/326 of 14 May 2008.

unforeseen delays, including those identified above. To expedite the conduct of trials, one of the Trial Chambers hearing a multi-accused case held additional hearings during the three-week summer recess period so as to make use of the extended availability of the International Tribunal's courtrooms at that time.

4. The following seven cases are currently in the trial phase: *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić; Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić; Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević; Prosecutor v. Perišić; Prosecutor v. Šešelj; Prosecutor v. Gotovina, Čermak, and Markač*; and *Prosecutor v. Lukić and Lukić*. One case, that of *Prosecutor v. Jovica Stanišić and Franko Simatović*, was adjourned due to the health condition of one of the Accused. It is not currently anticipated to start again before the new year.

5. The Chambers also dealt with a number of contempt cases during the reporting period. Many of these contempt cases arose out of the *Haradinaj et al.* case. Additionally, contempt cases were initiated against witnesses who refused to testify in the *Boškoski* and *Tarčulovski*, *Popović et al.* and *Šešelj* cases.

6. During this period, Trial Chamber Judges also managed seven cases in the pretrial stage, leading to the issuance of 107 written decisions and 20 oral decisions on such matters as the form of the indictment, challenges to jurisdiction, disclosure of evidence, protective measures for victims and witnesses, provisional release, adjudicated facts, and the admissibility of witness statements.

7. The Appeals Chamber also continued to work at maximum productivity in relation to appeals from both the International Tribunal and the International Tribunal for Rwanda. It rendered 21 interlocutory appeal decisions, two referral appeal decisions, one contempt appeal decision, one decision on review, and 13 other decisions since the last report.[2] It further delivered Judgement in four appeals, leaving a total of only seven appeals currently pending.[3]

8. Currently, only five Accused in four cases await the commencement of their trial before the International Tribunal. These new cases result from the late arrests of Tolimir, Đorđević, Župljanin, and Karadžić. One of these Accused, Župljanin, has been joined to the case of Mićo Stanišić. Two of them, Tolimir and Đorđević, could have been tried with their co-Accused if arrested earlier. However, due to their late arrests, each of them will now have to be tried separately. Karadžić will also have to be tried separately. However, if fugitive Mladić is arrested now, his case may be joined with that of Karadžić. Any further delay in his arrest, however, will in all likelihood result in the need for separate trials.

9. As mentioned in the last four reports to the Council, the International Tribunal continues to seek additional avenues for the transfer of convicted persons from the United Nations Detention Unit to States for the enforcement of their sentences. Two new agreements were signed during the reporting period with Poland and Albania. This brings the number of States which have signed enforcement agreements to 17.

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[2] See Enclosures VI, VIII.

[3] See Enclosure VII.

II. Measures taken to implement the Completion Strategy

A. Trial and appeal proceedings

10. The International Tribunal's commitment to meeting its Completion Strategy is demonstrated through the reporting to the Security Council of concrete measures adopted to enhance the efficiency of proceedings. Many of these measures were identified by the Working Groups on Speeding up Appeals and Trials. As President Pocar advised in his last report, both Working Groups were reconstituted in April 2008, not only to confirm the success of the measures adopted, but also to examine whether further improvements could be made to the efficient conduct of trials and appeals. Both Working Groups have now submitted their reports, and fresh recommendations are being implemented. The best illustration of the impact of these measures is provided below in the synopsis of cases before the International Tribunal. Additionally, those matters out of the control of the International Tribunal which have delayed the efficient conduct of proceedings are detailed in the cases in which such issues have arisen.

11. In the multi-accused case of *Milutinović et al.*, the six Accused are charged with five counts of war crimes and crimes against humanity allegedly committed by Serbian forces in 15 municipalities of Kosovo in the period between 1 January to 20 June 1999. The Prosecution case closed within the prescribed time on 1 May 2007. The Trial Chamber restricted the time allowed for the presentation of the Defence case pursuant to Rule 73 *ter*, as it had previously done under Rule 73 *bis* with respect to the presentation of the Prosecution case. The Defence case started in August 2007, and the Trial Chamber held sessions during the summer recess between 6 and 17 August 2007. The evidence presented by the Parties in the case ended on 16 May 2008. Thereafter, the Chamber invited evidence from Chamber witnesses. Efforts to obtain the testimony of one of these witnesses required intervention due to a failure of cooperation by the Government of Serbia. When this lack of cooperation was reported to the Security Council, Serbia acted to serve the subpoena to the Chamber witness, who eventually testified on 8 and 9 July 2008. This delayed closing arguments in the case by two weeks. Following closing arguments, which ended on 27 August 2008, the Chamber declared the evidence closed and adjourned to deliberate on the judgement in the case. The judgement is expected to be delivered shortly.

12. In the case against *Vojislav Šešelj*, the Accused is charged with fourteen counts of crimes against humanity and violations of the laws or customs of war allegedly committed in the territory of Croatia, in large parts of Bosnia and Herzegovina and in Vojvodina (Serbia), from August 1991 until September 1993. The first Prosecution witness was heard on 11 December 2007. Of the 100 witnesses scheduled by the Prosecution, the Trial Chamber has thus far heard 50 witnesses. The Prosecution has used approximately 91 hours of the 120 hours granted by the Trial Chamber. While the presentation of evidence was scheduled to last one year, a number of important and unforeseen delays have occurred since the commencement of trial, including a motion for disqualification of one of the Judges, and difficulties experienced by the Prosecution in getting witnesses to testify. In order to expedite the proceedings, the Trial Chamber has decided to make use of Rule 92 *ter* evidence for at least 13 witnesses, despite the constant refusal of the Accused to accept this process and to cross-examine any witness whose testimony was presented under Rule 92 *ter*. There was further delay occasioned by the filing of a motion to impose

counsel, as well as other confidential filings which resulted in the adjournment of the proceeding for more than one month. One contempt proceeding was also heard in relation to this case for a witness who refused to honour a subpoena to appear as a Chamber witness. There are additionally multiple pending requests for subpoenas, which the Prosecution submits are required due to alleged intimidation of witnesses. All of these factors have led to delays in the trial proceedings.

13. In the multi-accused case of *Prosecutor v. Prlić et al.*, the six Accused are charged with 26 counts of war crimes and crimes against humanity, related to approximately 70 crime sites, allegedly committed by Bosnian Croats against Bosnian Muslims in Bosnia and Herzegovina between the period of 18 November 1991 to about April 1994. The trial opened on 26 April 2006. The Prosecution completed the presentation of its evidence after 21 months of trial on 24 January 2008, using 297 hours of court time for direct and re-examination of its witnesses. Oral arguments under Rule 98 *bis* were heard between 28 January and 6 February 2008, and the decision denying a Judgement for acquittal was issued on 20 February 2008. The six Defence teams presented their lists of witnesses and exhibits pursuant to Rule 65 *ter* (G) on 31 March 2008. The pre-Defence conference and the start of the Defence case commenced on 21 April and 5 May 2008, respectively. Based on the complexity of the case and the fact that the Defence teams representing each of the six Accused are to present their respective cases, it is anticipated at this stage that hearings will continue into 2010. It is likely that this estimate will represent the minimum length of time needed for the case. There have been delays occasioned in the presentation of the first Defence case due to the unavailability of witnesses, and more recently, due to the incomplete disclosure of materials by the Defence in accordance with the Rules.

14. The trial of *Prosecutor v. Gotovina, Čermak, and Markač*, who are charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia in 1995, started on 11 March 2007. More than half of the 112 Prosecution witnesses have been heard to date. The Prosecution has tendered witness statements made pursuant to Rule 92 *ter* for all of its *viva voce* witnesses, which has enabled it to stay well within the hours allotted by the Trial Chamber for the presentation of evidence. A by-product of extensive use of Rule 92 *ter* witnesses, however, has been an increase over earlier estimates of the time needed for cross-examination by the Defence teams. The primary procedural issue currently affecting the trial concerns the Prosecution's request for certain documentation which has not been provided by the Croatian government. The Prosecution has requested that the Trial Chamber order Croatia to produce this documentation, and a decision on this matter is pending. Trial proceedings are still estimated to take 18 months to complete.

15. The trial in the case of *Prosecutor v. Rasim Delić* commenced on 9 July 2007 and was expected to last for a year. The Trial Chamber sat 114 trial days and heard evidence from 64 Prosecution witnesses and 13 Defence witnesses. Closing arguments were presented from 9 to 11 June 2008, 11 months after the trial began. The Trial Judgement was rendered on 15 September 2008.

16. The trial of *Prosecutor v. Momčilo Perišić* began on 2 October 2008. The Accused is charged with 13 counts in relation to crimes alleged to have been committed in Sarajevo, Zagreb, and Srebrenica (eight counts of crimes against humanity and five counts of violations of the laws or customs of war). The trial is

estimated to take 24 months to complete. As with the *Gotovina et al.* trial, the Prosecution will be making extensive use of Rule 92 *ter* evidence in its case-in-chief in order to reduce the length of trial. Additionally, the Prosecution brought several motions under Rule 94 for judicial notice of adjudicated facts to trim the presentation of its case. Most of these were granted in whole or in part. Five decisions taken prior to the trial on the judicial notice of adjudicated facts eliminated the need for many witnesses to appear in person to testify on crime sites in Sarajevo, Srebrenica, and Zagreb. In total, the Trial Chamber reduced the Prosecution's proposed number of trial hours for presentation of its case-in-chief by 60 per cent from 907 hours when the case was assigned to the Trial Chamber on 20 March 2008 to 355 hours by the time the trial started on 2 October 2008.

17. In the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, the two Accused are charged with four counts of crimes against humanity and one count of war crimes. The commencement and progress of this trial has been significantly delayed due to the poor physical and mental health of the Accused Jovica Stanišić. A decision confirming Stanišić's fitness to stand trial was issued on 10 March 2008. The decision also provided for a reduced sitting schedule to accommodate the Accused's ongoing health problems. Originally intended to start in March, the trial was delayed from early March 2008 to the end of April 2008. Hearings to examine medical experts and to hear arguments on the future management of the trial were held in early April 2008, and a decision was issued on the future course of the proceedings, establishing a videoconference link with the Detention Unit for use by this Accused. On 28 April, the pretrial conference was held and the trial commenced, with opening statements being heard in the absence of the Accused. The Accused did not utilize the videoconference link. One witness was heard in the absence of the Accused before the proceedings were again adjourned due to his physical illness and subsequent hospitalization. In May 2008, the Appeals Chamber issued a ruling overturning the Trial Chamber's decision to establish the videoconference link and granted the defence request for adjournment of the proceedings for a minimum period of three months. It also required the Trial Chamber to reassess the Accused's state of health before considering when the trial should re-commence. On 26 May 2008, the Trial Chamber granted provisional release to Belgrade for both Accused and implemented a complex procedure for monitoring the health of Jovica Stanišić, involving both his treating physicians in Belgrade and independent experts appointed by the Tribunal. The minimum three-month period of adjournment has now expired, and the Chamber is in the process of reviewing the various medical reports prior to making any further decision as to the future course of these proceedings.

18. Throughout May 2008, Trial Chamber III sought to identify another case that could commence on short notice. After consultations between the President of the Tribunal and myself, as the presiding Judge of the Trial Chamber, a decision was made to commence the trial of Milan Lukić and Sredoje Lukić, a case already assigned to the Chamber and which was nearing readiness for trial. The *Lukić and Lukić* case commenced on 9 July 2008, and witnesses were heard before the summer judicial recess. The Prosecution case closed on 11 November, after calling 40 witnesses. A decision pursuant to Rule 98 *bis* was issued on 13 November, and the first Defence case is scheduled to commence shortly.

19. The Indictment in the *Popović et al.* case, which has seven Accused, contains eight counts, including charges of genocide and crimes against humanity allegedly

committed at 20 different crime sites. The original estimate for the length of the trial was 29 months, and the Trial Chamber has continued to issue orders that have expedited the proceedings. On 29 November 2007, the Trial Chamber issued an order scheduling the close of the Prosecution case-in-chief for 1 February 2008, the start of the hearing of the Rule 98 *bis* submissions for 14 February 2008, the Pre-Defence Conference for 22 May 2008, and the commencement of the Defence Case for 2 June 2008. The Prosecution case was completed on 7 February 2008, and the Defence Case commenced as planned on 2 June 2008. At the Pre-Defence Conference, the Trial Chamber raised with the Defence Teams the possibility of reducing the length of their cases, and subsequently some witnesses were dropped, while the testimony of others was shortened by the use of Rule 92 *ter*.

20. Stojan Župljanin was arrested on 11 June 2008, and on 21 June 2008, he was transferred to the seat of the Tribunal. At his further appearance on 21 July 2008 he entered a plea of not guilty on all charges in the Indictment.

21. Before the arrest of Stojan Župljanin, the case against *Mićo Stanišić* was at an advanced stage of pretrial preparation, the Prosecution and Defence Pre-trial Briefs having been filed in early 2007. Following the arrest of Stojan Župljanin, the Prosecution moved for a joinder of the case against *Mićo Stanišić* with that of *Stojan Župljanin*. On 23 September 2008, the Chamber granted leave to the Prosecution to join the two cases and further granted in part a Prosecution motion to amend the Indictment. As a result, on 29 September 2008, the Prosecution filed a new consolidated Indictment against the two Accused. The joinder can be expected to have an impact on the anticipated start-date of the joint trial and will facilitate the efficient use of court time.

22. Turning to the *Tolimir* case, Zdravko Tolimir was transferred to the seat of the Tribunal on 1 June 2007. In August 2007, he elected to conduct his own defence. Since the beginning of 2008, two legal advisers and a case manager have been assigned to his Defence team. On 14 December 2007, the Trial Chamber issued a decision on his preliminary motions. From the beginning of the case, Tolimir had refused to accept documents on the ground that they were not written in "Serbian and the Cyrillic script". On 28 March 2008, the Appeals Chamber dismissed the Accused's appeal against the Pre-Trial Judge's oral decision that denied his request for the service of documents in Serbian and the Cyrillic script. During a status conference held on 30 June 2008, the Pre-Trial Judge informed the Accused that his behaviour amounted to "substantial and persistent obstruction" and was impeding the expeditious advancement of the case, warning him that, unless he was prepared to accept all material which had been and would be provided to him in the Bosnian/Croatian/Serbian language, whether in the Latin or the Cyrillic script, the Trial Chamber would issue an order for the appointment of counsel. Following this, the Accused, through his legal advisers, started accepting all documents served in this case by the Registry and the Prosecution. On 15 October 2008, the Prosecution filed its Rule 65 *ter* witness list, witness summaries, and exhibit list.

23. In the *Đorđević* case, the Accused made his initial appearance on 19 June 2007. This case is trial ready and awaiting assignment to a Trial Chamber.

24. In addition to the cases outlined in the above paragraphs, Trial Chambers also heard a number of contempt cases. The contempt case against Dragan Jokić is drawing to a close. The contempt proceedings were initiated following Jokić's refusal to testify in the case of *Prosecutor v. Popović et al.* The Trial Chamber

decided to prosecute the matter itself and issued an Order in Lieu of Indictment on Contempt on 1 November 2007. To date, two hearings have been held, in which Jokić has led evidence from two witnesses and tendered several exhibits. Trial Chamber I is also currently considering five contempt cases in various stages of pre-Indictment investigation or post-Indictment, pretrial processing, three of which arise from the *Haradinaj et al.* case. Of the three *Haradinaj et al.* related contempt proceedings, two trials have already been held. One of the two trials, *Prosecutor v. Baton Haxhiu* (IT-04-84-R77.5), took place on 24 June 2008. On 24 July 2008, Haxhiu was found guilty of contempt of the Tribunal and sentenced to a fine of 7,000 Euros. The other trial, *Prosecutor v. Astrit Haraqija and Bajrush Morina* (IT-04-84-R77.4), was held from 8 to 11 September 2008. The Trial Judgement is expected to be delivered in December 2008. The third *Haradinaj et al.* related contempt case, *Prosecutor v. Shefqet Kabashi*, is still pending his arrest and transfer to The Hague. Finally, contempt proceedings were also initiated and completed against Ljubiša Petković for failure to comply with a Chamber order in the *Šešelj* case.

25. With regard to the Appeals Chamber, three appeals Judgements were issued during the reporting period in the *Orić* (3 July), *Strugar* (17 July) and *Martić* (8 October) cases, in addition to one contempt Judgement (*Haxhiu*, 4 September) and one review decision (*Blagojević*, 15 July). There are currently six appeals from Judgement and one request for review pending before the Appeals Chamber. A decision on the request for review in the *Naletilić* case is expected before the judicial recess. Of the six pending appeals, hearings have already been held in the *Krajišnik* case, with regular appeal hearings held on 21 August and further evidentiary hearings on 3, 5 and 11 November, including the appearance of Radovan Karadžić as a witness. Furthermore, it is currently anticipated that the hearings in the *Mrkšić et al.* case will take place in mid-January 2009. The *Haradinaj et al.* case will likely be heard in the first quarter of 2009, and the *D. Milošević* case is also expected to be heard shortly thereafter. Briefing is still under way in the *Boškoski & Tarčulovski* case as well as the *Delić* case. Completion of briefing in the former will be delayed slightly until mid-January 2009 pursuant to a request from the Appellant following the appointment of new lead counsel on appeal. Further, motions to introduce additional evidence pursuant to Rule 115 were brought in both the *Krajišnik* and *Mrkšić et al.* appeals, which has resulted in some delays and may result in further delays, depending on whether the motions are granted.

26. A further development impacting on the completion strategy was the arrest on 18 July 2008 of the fugitive Radovan Karadžić. Following his transfer to the Tribunal on 30 July 2008, the Accused entered an initial appearance on 31 July 2008 and a further initial appearance on 29 August 2008. The case is in the pretrial stage. The Accused has thus far insisted on serving as his own counsel.

27. In the first Completion Strategy Report submitted to the Security Council in May 2004, the Security Council was advised that a total of eight Accused were being tried in six cases and that in the nine years following its establishment, the International Tribunal had completed or was holding first instance proceedings involving 59 Accused in 38 proceedings.[4] There were a total of 33 Accused awaiting trial in 17 cases,[5] appeals had been completed in 20 cases involving 28 Accused,[6]

[4] S/2004/420, para. 2.

[5] S/2004/420, Annex 3.

[6] S/2004/420, Annex 4.

and 20 fugitives were at large. Today, only four years later, only five Accused are in the pretrial stage,[7] 26 Accused are currently on trial,[8] trial proceedings against 67 Accused have been completed and appeals have been completed in 34 cases involving 54 Accused. It is only the two indictees that still need to be brought to face justice, and their apprehension relies upon the cooperation of the international community.[9] The achievements of the International Tribunal far surpass that of any other international or hybrid court and demonstrate the commitment of the International Tribunal to the expeditious completion of its mandate.

B. *Ad litem* Judges

28. The *ad litem* Judges have continued to make an outstanding contribution to expediting to the International Tribunal's work. Currently, the International Tribunal has fourteen *ad litem* Judges, and I am grateful to the members of the Security Council for resolution 1800 of February 2008, which authorized the assignment of up to four additional *ad litems*. Upon issuance of the Trial Judgement in the *Milutinović et al.* case, expected early next year, the number of *ad litem* Judges will be eleven, one less than permitted under the Statute of the International Tribunal. All *ad litems* are fully engaged in the work of the International Tribunal. Of these fourteen, one *ad litem* judge is serving as full *ad litem* Judge on two cases.

29. *Ad litem* Judges who have not been assigned to an additional trial are fully engaged in the preparation of new cases for trial. Accordingly, all fourteen *ad litem* Judges have been willing to take on an onerous workload to ensure the expeditious completion of the International Tribunal's mandate and to secure the continued support of the Council and of Member States.

C. Judges and staff retention

30. As the International Tribunal nears the end of its mandate, it continues to consider and pursue the adoption of measures to ensure the retention of its most qualified staff, who are leaving the International Tribunal in increasing numbers for more secure employment with other international courts and institutions. As previously reported, the departure of experienced staff members hinders the International Tribunal's ability to expeditiously complete the mandate entrusted to it by the Security Council. Yet existing staff retention incentives have proved insufficient. Thus, support from the Security Council and Member States in developing additional incentives is of vital importance.

31. The International Tribunal also continues to seek a positive resolution to the long-outstanding issue of the legal entitlement of its Judges to receive pensions in full parity with those received by the Judges of the International Court of Justice. Although the independent consultant's study commissioned by the Secretary-General recommended that the Judges receive equivalent pensions, this issue remains unresolved. The International Tribunal must once again emphasize that a resolution of this issue is key to the retention of its highly skilled and experienced Judges and is critical to guaranteeing the timely completion of the International Tribunal's mandate.

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[7] See Enclosure IV.
[8] See Enclosure II.
[9] See Enclosure III.

D. Referral of cases involving intermediate and lower-ranking accused to competent national jurisdictions

32. The impact of referrals on the overall workload of the International Tribunal has been substantial. Ten Accused have been transferred to the War Crimes Section of the State Court of Bosnia and Herzegovina, two Accused have been transferred to the authorities of Croatia, and one Accused has been transferred to Serbia for trial before the domestic courts of these countries.[10] However, none of the cases currently pending on the Tribunal's docket are cases involving lower level or intermediate accused as stipulated in Security Council resolutions 1503 and 1534, and as a result, none of the Tribunal's remaining cases can be considered for referral to domestic courts.

33. The Prosecution continues to monitor the trials referred to the region through the Organization of Security and Cooperation in Europe (OSCE). Under Rule 11 *bis*, the Prosecution has the authority to request the Referral Bench to revoke its referral order should it determine that such a case is not being conducted in full adherence with human rights norms and due process standards. The War Crimes Section of the State Court of Bosnia and Herzegovina has completed two cases referred by the International Tribunal, one is at the appeal stage, and three trials are ongoing. On 28 March 2007, proceedings against the first Accused referred, Stanković, came to a close with the Appellate Panel of the Court of Bosnia and Herzegovina sentencing him to 20 years' imprisonment. On 25 May 2007, Stanković escaped from prison and is currently at large. The International Tribunal remains gravely concerned about the lack of progress on behalf of the relevant authorities in apprehending Stanković and prosecuting those allegedly responsible for assisting his escape. On 16 February 2007, the trial of Janković concluded with the Court finding him guilty of crimes against humanity and sentencing him to 34 years' imprisonment. On 23 October 2007, the Court of Bosnia and Herzegovina Appellate Panel upheld the Trial Panel's sentence. The first-instance Judgement in the case of *Rašević* and *Todović* was pronounced on 29 February 2008, finding the Accused guilty of crimes against humanity and sentencing them to 8.5 years' and 12.5 years' imprisonment, respectively. Appeal proceedings are currently pending. On 30 May 2008, the Court of Bosnia and Herzegovina pronounced the first-instance Judgement against *Mejakić*, *Gruban*, and *Knežević*, sentencing the Accused to 21 years', 11 years', and 31 years' imprisonment, respectively, for crimes against humanity. The trial in the *Trbić* case started on 8 November 2007 before the Court of Bosnia and Herzegovina and is ongoing. The trial in the single case referred by the International Tribunal to Croatia, that of *Ademi and Norac*, concluded on 30 May 2008 with the Zagreb County Court acquitting Ademi of all charges and sentencing Norac to 7 years' imprisonment for war crimes. Appeal proceedings are pending. In the *Kovačević* case, the only one referred to Serbia, the Belgrade District Court found on 5 December 2007 that the state of mental health of the Accused temporarily prevented criminal prosecution. The International Tribunal is satisfied that these proceedings are being conducted in full compliance with international norms of due process as recognized by the reports of the OSCE and other human rights organizations.

[10] See Enclosure V.

E. Outreach and capacity-building

34. The International Tribunal continues to conduct a wide range of outreach activities with the aim of bringing its work closer to communities of the former Yugoslavia. The efforts of its Outreach Programme and other offices are focused on several key areas, including the facilitation of trial coverage by the local media, direct community outreach by its officers on the ground, and capacity-building efforts with national judicial institutions dealing with war crimes.

35. The media from the region continues to receive crucial assistance in securing access to trials through the Tribunal's website and direct contact with Outreach and Media offices in The Hague and the region. During the reporting period, such efforts played a crucial role in increasing media coverage on the arrests and trials of high-profile accused and helped the International Tribunal reach audiences across the former Yugoslavia. In the busiest month, September, the Tribunal's website recorded over ten million page hits. Webcasts of the trials continued to attract considerable audiences.

36. Outreach officers on the ground in Bosnia and Herzegovina, Croatia, and Serbia continue to participate in a variety of public events, communicating directly with the most affected communities, legal professionals, public officials, and civil society leaders. Often countering myths and misperceptions about the International Tribunal and its proceedings, the Outreach Programme's staff members in the former Yugoslavia engage the public on a regular basis, by speaking at public events and to local media, giving lectures and presentations and disseminating documents and information materials. During the reporting period, Outreach staff in Serbia began a programme of public debates and media appearances alongside Serbian government officials.

37. In addition, the regional Outreach offices remain the main focal points for the International Tribunal's capacity-building efforts in the region. In cooperation with outside agencies and organizations, our offices have actively supported various training programmes, including visits to the Tribunal and seminars conducted on the ground. While many such activities are aimed at lawyers, the transfer of expertise can also benefit other professionals involved in war crimes proceedings. During the reporting period, staff of the International Tribunal have, for instance, provided training to the Belgrade District Court's security guards and witness support staff.

38. The International Tribunal continues to promote leadership and support for the rule of law among key youth audiences in the former Yugoslavia through educational programmes and exchanges organized by the Outreach Programme. A groundbreaking initiative in this respect is an internship programme developed jointly with a civil society organization based in Serbia. The second group of Serbian students selected and sponsored through this project has started interning at the International Tribunal. Immediately afterwards, they will proceed to do internships in national judicial institutions and non-governmental organizations, thereby benefiting the local structures that are essential for a lasting peace and rule of law in the region.

F. Cooperation of States with the International Tribunal

39. I am pleased to note a clear demonstration of support from the international community in the arrest and transfer of two of the high-level remaining fugitives:

Karadžić and Župljanin. I hope that the arrests and transfer of the remaining fugitives, Mladić and Hadžić, will shortly follow. As past Presidents have made clear on many occasions, the International Tribunal must not close its doors until these fugitives are arrested and tried. I once again ask all States to cooperate in full adherence with their obligation to do so under Article 29 of the Statute of the International Tribunal, and I urge the Security Council to make clear that the trial of these fugitives by the international community does not hinge upon the International Tribunal's proposed Completion Strategy dates.

III. Legacy of the International Tribunal and residual mechanisms

40. As previously reported by past Presidents, for almost three years now, the International Tribunal has been focusing its attention on the important question of devising the mechanisms that will be left in place to address residual issues after the completion of the cases on its docket. Following the final report submitted by the International Tribunal jointly with the Tribunal for Rwanda to the Office of Legal Affairs in September 2007, representatives of the Tribunal have met several times with members of the Security Council Working Group on the ad hoc Tribunals and provided important additional clarifications on some of the issues raised in the September Report. With a view to enhancing their understanding of the multiple and complex questions linked to the establishment of a residual mechanism, President Pocar also took the initiative of inviting members of the Security Council Working Group for a visit of the International Tribunal on 1 and 2 October 2008. This visit provided the Tribunal with a unique opportunity to present its work and achievements and for members of the Working Group to directly seek the views of the judges and senior staff of the International Tribunal on the nature and functions of the future residual mechanism. This visit proved extremely beneficial, as it enabled members of the Working Group to obtain unique insights into the daily work of the International Tribunal and the legal, procedural and logistical challenges of complex international criminal proceedings. On 30 September 2008, we also received the final report of the Advisory Committee on Archives, which had been established jointly by the Registrars of the International Tribunal and of the International Criminal Tribunal for Rwanda in October 2007. The report addresses a number of key issues such as the location, public access, security, and preservation of the International Tribunal's records and has been communicated to the Working Group with a view to providing it with an informed understanding of the archive issues.

41. Aside from the institutional and legal questions arising from the devising of a residual mechanism, the broader question of the legacy of the International Tribunal's work for international as well as domestic courts and for advocates engaged in the fight against impunity has become one of our priorities. With the work of the Tribunal progressively winding down, we have multiplied our efforts in this regard and initiated a number of ambitious projects which seek to offer a comprehensive yet concise record of our jurisprudence, methods, and practices. As previously reported, we have elaborated a compilation of our best practices, which has now been finalized and will be published shortly and disseminated by the United Nations Interregional Crime and Justice Research Institute (UNICRI), which has been partnering with us in this endeavour. Another project, for which we benefit from the assistance of the OSCE, will offer an assessment of current outreach activities and training programmes in countries of the former Yugoslavia in order to

identify lessons learned and best practices. The results will serve in designing a capacity-building, technical assistance programme to meet the needs of the local justice systems responsible for dealing with war crimes cases. The design and consultative stages of the project ended with the convening of an expert meeting in October 2008, during which participants launched the discussion of best practices and lessons learned by sharing their relevant expertise. Next steps include field interviews with international agencies engaged in similar activities, leading academic institutes, international non-governmental organizations, civil society actors, and local authorities from the region, which will culminate in a final report that is expected to be issued in mid-2009.

IV. Conclusion

42. During the reporting period, the International Tribunal has pursued its efforts to meet completion strategy targets and strived to further streamline its proceedings in full compliance with due process standards. The slippages foreseen in estimated completion dates are for the most part attributable to the late arrests of fugitives, whose trials should be completed in the course of 2010 and whose appeals are thus unlikely to be concluded in 2011. In this regard, I cannot overstate the importance of ensuring the immediate arrest of the two remaining fugitives, so as to limit to the greatest extent possible further slippages in completion schedules and without which the International Tribunal's work cannot be fully completed. While the International Tribunal's judges and staff continue to be fully committed to improving the expeditiousness of the International Tribunal's proceedings through the identification and implementation of new measures, I must reiterate to the Security Council that such commitment must be matched by the Council's support for measures to retain the Tribunal's most qualified judges and staff. I thus urge the Security Council to ensure that the conditions of service of Judges of the International Tribunal are fully respected and that adequate retention schemes will be adopted so that the Tribunal is able to keep its essential staff. I must also restate that domestic judicial institutions in the former Yugoslavia are crucial partners in the development of a peaceful society based on the rule of law, to whom assistance and support must continue to be granted so as to guarantee the International Tribunal's long lasting legacy and the continuation of its work.

43. The International Tribunal will be remembered as the first and most successful international criminal institution established thus far, indicting 161 individuals, and completing proceedings for 116 of them. In order to ensure that the achievements accomplished endure, I call on the Security Council to maintain its vital support to the International Tribunal, to ensure the immediate arrest of the last two fugitives so that its remaining cases can be completed expeditiously and to provide assistance to judicial institutions in the former Yugoslavia to enable them to continue the work started by the International Tribunal and the Security Council.

Annex II

[Original: English and French]

Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)

Introduction

1. This is the tenth report submitted by the Prosecutor pursuant to Security Council resolution 1534 (2004) of 26 March 2004.

2. During the past six months, the Office of the Prosecutor has continued to make progress towards achieving the completion strategy goals. Stojan Župljanin and Radovan Karadžić were arrested in June and July respectively, and are now in The Hague awaiting trial. Only two accused, Ratko Mladić and Goran Hadžić, are still at large. It is crucial that these fugitives are arrested and tried at the International Tribunal as soon as possible.

3. During this reporting period, the Office of the Prosecutor continued to focus on four priorities: (1) completing trials and appeals; (2) securing international cooperation for the provision of evidence and for the arrest of fugitives; (3) transferring cases and investigative material to national authorities and assisting the transition back to domestic jurisdictions; and (4) managing resources in a way that prepares for the ultimate downsizing of the Office of the Prosecutor as trials and appeals are completed.

The completion of trial and appeal proceedings

4. The Prosecutor remains strongly committed to the Tribunal's completion strategy and since the last report to the Security Council in May 2008 further progress has been made in its implementation.

5. The crimes that merit prosecution in the international forum are by definition broad and complex. Most involve widespread attacks on civilian populations in which thousands of innocent people are victimized. Each of the cases that are now before the Tribunal involves senior figures from the conflict in the former Yugoslavia. Cases involving lower or mid-ranking accused have been removed from the Tribunal's docket, some being transferred for trial in the States of the former Yugoslavia. A number of the current cases (the "multi-leadership trials") involve the prosecution of six or more political or military leaders. Bringing evidence forward to prove charges of the magnitude contained in the Tribunal's indictments is a substantial undertaking in every case and remains a major challenge.

Trials

6. That challenge has continued to be met during the last six months, with the result that progress has been made in addressing the length of trials and in moving through the Tribunal's trial programme. Across the board, further steps have been taken by the Prosecution to shorten the length of trials. In most cases the scope of the criminal conduct charged has been reduced. Wherever possible, prosecutors

have sought defence agreement on uncontroversial facts, thus avoiding the need to lead evidence on these points. Trial Chambers have been requested to take judicial notice of adjudicated facts or documentary evidence from other proceedings, again reducing the need to call witnesses. Prosecutors have also made extensive use of the provisions in the Tribunal's Rules which allow written evidence to be presented in lieu of oral testimony, thereby avoiding having to bring many witnesses to The Hague, and reducing the length of the live testimony of many witnesses who do appear in court.

7. During the reporting period, trial judgements were rendered in the *Boškoski and Tarčulovski* and *Delić* cases on 10 July 2008 and 15 September 2008, respectively. At the end of the reporting period, the Office of the Prosecutor is prosecuting 26 persons in seven trials: *Milutinović et al.* (judgement awaited), *Popović et al.*, *Prlić et al.*, *Gotovina et al.*, *Šešelj*, *Perišić*, and *Lukić and Lukić*. The trial started in a further case, *Stanišić* and *Simatović*, but has now been adjourned pending an assessment of the health of the first accused. Five accused are currently awaiting trial: Stojan Župljanin and Mićo Stanišić, Vlastimir Đorđević, Zdravko Tolimir and Radovan Karadžić. Only two fugitives, Ratko Mladić and Goran Hadžić, remain at large.

8. The closing arguments in *Delić* were heard in mid-June 2008 and the judgement was rendered on 15 September 2008 after 115 days of trial. Rasim Delić was the highest ranking officer of the Army of Bosnia-Herzegovina to be tried before the International Tribunal. His conviction under Article 7(3) of the Statute refuted the argument that the foreign fighters who came to Bosnia-Herzegovina from all over the world, were not a part of the army of which he was the commander.

9. The case against *Milutinović et al.* was the first of the three multi-leadership trials to complete its evidence. The case addresses the widespread and serious crimes which were committed against the Kosovo Albanian population in the territory of Kosovo in 1999. The six accused comprise high-ranking members of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Yugoslav Army (VJ) and the police. They include Milan Milutinović, the former President of Serbia and member of the Supreme Defence Council of the Federal Republic of Yugoslavia and Nikola Šainović, the former Deputy Prime Minister of the Federal Republic of Yugoslavia. The Prosecution had closed its case on 1 May 2007, after 127 days of evidence. The Trial Chamber heard the parties' closing arguments from 19 August until 27 August 2008 and the Trial Chamber's judgement is now expected to be issued in early 2009. The completion of the trial is a milestone for the Tribunal and vindicates the use of joinder as one of the key pillars of the Tribunal's completion strategy. The proceedings lasted for 285 trial days in which 1,087 hours of court time were used, 36 per cent of that time being taken by the Prosecution, which made effective use of written evidence in lieu of oral testimony.

10. It is expected that *Popović et al.* will be the second multi-leadership trial to be completed. The case began on 14 July 2006. In this case, the seven accused were all high ranking members of the Bosnian Serb Army (VRS) and the Ministry of Interior. The charges relate to the murder of over 7,000 men and boys from Srebrenica and the removal of the entire Muslim population from Srebrenica and Žepa in 1995. The Prosecution case closed on 7 February 2008 and the case is now well into the defence phase. Only the defence cases of three accused remain to be heard and it is

currently estimated that the hearing of the evidence will finish in the early part of 2009. The Srebrenica evidence, which has also been led in other cases, is expected to constitute one of the principal building blocks of the *Karadžić* case.

11. In the third multi-leadership trial, *Prlić et al*, the Prosecution was initially granted 293 hours to present its evidence. The Prosecution case opened in April 2006 and was closed in January 2008. The trial has therefore been in the defence phase for over six months and is proceeding slowly. The case concerns crimes committed in areas of the territory of the Republic of Bosnia and Herzegovina which were claimed to be part of the Croatian Community of Herceg-Bosna (HZ H-B) and later the Croatian Republic of Herceg-Bosna (HR H-B). The six accused include Jadranko Prlić, the former President of the HZ H-B and Prime Minister of HR H-B, high ranking members of the Croatian Defence Council (HVO) and Slobodan Praljak, a senior Croatian Army officer and the former Assistant Minister of Defence and senior representative of the Croatian Ministry of Defence to the Herceg-Bosna/HVO government and armed forces. The defence case for the first accused began in May 2008 and it is due to be completed in mid-January 2009. The cases of each of the five other accused will continue thereafter. On the basis that the Court sits four days a week, it is currently estimated that the case will finish in mid-2010. Careful monitoring is made of how the court time is allocated and spent. This is a complex trial, a particular feature of which is the percentage of court time devoted to procedural and administrative issues rather than witness testimony. The court time allocated to procedural and administrative issues is relatively high at 20 per cent.

12. The *Gotovina et al.* case began on 11 March 2008 and the Prosecution case is now due to finish in January or February 2009. This high profile case involves senior Croatian accused. The charges relate to crimes against humanity and war crimes committed during Operation Storm, a military operation launched by Croatia from August to November 1995. The accused are Ante Gotovina, a General in the Croatian Army, Ivan Čermak, former Commander of the Knin Garrison and Mladen Markač, former Commander of the Special Police of the Croatian Ministry of the Interior and Assistant Minister of Interior. Proceedings under Rule 54 *bis* in relation to documents requested by the Office of the Prosecutor have been before the Trial Chamber since June 2008.

13. The case against Vojislav Šešelj, the President of the Serbian Radical Party, commenced in December 2007 and as of 30 November 2008, 110 days of court hearings will have been concluded. This breaks down to an average of slightly more than nine days of trial being held per month. The Prosecution was allocated 120 hours to present its case-in-chief and as of early November 2008, the Prosecution had used 77 per cent of its total time. According to the official figures maintained by the Registry, as of 7 November 2008, the trial had required 310 hours of total court time, with the Prosecution using approximately 110.5 hours (35.6 per cent of the total); the Accused 98 hours (31.6 per cent of the total); and the Trial Chamber 101.5 hours (32.7 per cent of the total). The Prosecution is making every effort to present the case as expeditiously as possible. However, problems relating to witness intimidation and the accused representing himself continue to affect the progress of the trial. A Prosecution motion to assign Defence Counsel to the Accused on the grounds of obstruction of the proceedings by the accused and witness interference is pending before the Trial Chamber since July 2008.

14. The trial against Milan Lukić and Sredoje Lukić started in July 2008. Milan Lukić was the leader of a group of local Bosnian Serb paramilitaries in South-Eastern Bosnia and Herzegovina which worked with the local police and military units to persecute the local Muslim population. His co-accused Sredoje Lukić, was a police officer and a member of the paramilitary group. Both have been charged with crimes against humanity of persecutions on political, racial and religious grounds, murder, inhumane acts, extermination, murder and cruel treatment. Although the Prosecution originally sought to transfer this case to the region in 2007 under Rule 11 *bis*, the Appeals Chamber ruled that it should be heard before the Tribunal since Milan Lukić was perhaps the most significant paramilitary leader to be tried by the Tribunal at that date. In April 2008, the Prosecution reduced its case by a third. The Prosecution used less time than it estimated in presenting its case, and closed on 11 November 2008. The Prosecution's use of written statements to present witness evidence has speeded up the case considerably. The length of the Prosecution case has also been reduced because the Prosecution asked for judicial notice to be taken of adjudicated facts and documentary evidence from other proceedings. The Chamber's thorough and detailed analysis of this request allowed the Prosecution to reduce the amount of evidence presented. As a result of these measures, the Chamber had reduced the time that the Court sits from five days a week, to four days a week, to allow the Defence to cope with the volume and speed at which prosecution evidence was being presented.

15. Another case which has begun since the Prosecutor's last report to the Security Council in May, is that against Momčilo Perišić. As the former Chief of the General Staff of the VJ, Perišić was the most senior officer in the army of the Federal Republic of Yugoslavia. The Prosecution successfully sought judicial notice of documents and adjudicated facts relating to crimes committed in Srebrenica and crimes committed during the military campaign against Sarajevo. Again, the Prosecution has presented the majority of its crime base evidence by written statements. As a result, the Prosecution has been able to reduce the number of witnesses it intends to call and has been able to cut down the number of hours allocated for its case by two thirds. Although the trial is still in its early stages, it is estimated that the prosecution case will last about a year, and that the case will extend into 2010.

16. In the case against Jovica Stanišić and Franko Simatović, two of the highest ranking members of the State Security Service in Belgrade under Slobodan Milošević, the ill-health of the first accused continues to delay the case. Although Jovica Stanišić was found fit to stand trial, and special arrangements were made to accommodate his condition, the trial was recently stopped when he claimed to be unable to follow the proceedings by video link from the detention unit. On appeal the trial was adjourned for several months. The Office of the Prosecutor has now requested that the Court should re-assess the situation regarding Jovica Stanišić's health with a view to recommencing the trial. The Prosecution has made it clear that it is open to exploring ways in which practical arrangements might be made to proceed with the trial while making allowances for Stanišić's alleged poor health and at the same time safeguarding his rights as an accused.

17. Following the arrest of Stojan Župljanin in June 2008, the Office of the Prosecutor successfully requested that his case be joined with that of Mićo Stanišić in order to avoid separate trials on the charges, which relate to atrocities which took place in the Autonomous Region of Krajina in Bosnia and Herzegovina. Although

the commencement of the trial is likely to be delayed to allow Župljanin sufficient time to prepare his defence, the joinder of these accused into a single trial will represent significant overall saving in court time.

18. The only other trials which have not yet begun are those of *Đorđević*, *Tolimir* and *Karadžić*. Vlastimir Đorđević was Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of the Public Security Department of the Ministry. He was also the superior of one of the accused in the *Milutinović et al.* case. It is expected that this case may be the next to go to trial.

19. Zdravko Tolimir was the Assistant Commander for Intelligence and Security of the VRS Main Staff. He was transferred to the Tribunal too late to be tried with his former co-accused in the *Popović et al.* case. A separate case is therefore currently being made ready for trial. Given the fact that this will be the fourth Srebrenica trial before the Tribunal, there should be scope to shorten the proceedings significantly by using evidence already led in other cases.

20. Pretrial proceedings are now under way in the case against Radovan Karadžić, formerly the highest civilian and military authority in the Republika Srpska. On 22 September 2008, the Office of the Prosecutor submitted a motion to amend the indictment. In the proposed amended indictment, the Prosecution not only updated and clarified its legal and factual allegations relating to the accused's individual responsibility, but also narrowed the scope of the criminal conduct underlying the charges. If accepted, these amendments will lead to a more efficient and expeditious presentation of the Prosecution's case, which may also benefit from the fact that most of the crimes charged have already been the subject of prosecutions before the Tribunal. Here again there is likely to be significant scope for limiting the amount of live evidence at the trial and for taking judicial notice of adjudicated facts. The case, however, is currently in its early stages and until a number of important issues are resolved, it is too soon to predict accurately the duration of the trial.

21. If Ratko Mladić, currently at large, is arrested soon, the Office of the Prosecutor intends to request that his trial be joined with that of Radovan Karadžić. If the other outstanding fugitive, Goran Hadžić is arrested, his case will proceed as a stand-alone trial, there being no remaining opportunities for joinder with other cases.

Contempt cases

22. In June and September the Office of the Prosecutor presented evidence in two short trials in which charges were brought against three individuals for contempt of the Tribunal. The first, against Baton Haxhiu resulted in the conviction of a Kosovo journalist for publishing information about a protected witness in the case against Ramush Haradinaj. The second, against Astrit Haraqija and Bajrush Morina, also related to the case against Ramush Haradinaj. It concerned charges of interfering with another protected witness, and is awaiting judgement. In addition the Prosecution brought a number of other instances of apparent contempt to the attention of Trial Chambers.

Appeals

23. Prosecution work on appeals has been constant. The Appeals Chamber rendered a judgement in the *Orić*, *Strugar* and *Martić* cases. The Prosecution filed appeals in two new cases: *Boškoski and Tarčulovski* and *Delić*.

24. The Prosecution makes every effort to file in advance of the Chamber's deadlines to promote earlier hearings. Filings were completed in the *Mrkšić* and *Šljivančanin*, *Haradinaj et al.* and *D. Milošević* cases and the Prosecution is prepared to proceed as soon as the Appeals Chamber is ready to schedule an oral hearing. The Prosecution presented its final arguments in the *Krajišnik* case and now awaits judgement from the Appeals Chamber.

25. Over the next six months, appeals practice will continue to be very active. In early 2009, the trial judgement is expected in the first multiple-accused case, *Milutinović et al.* The trial judgement in *Lukić* and *Lukić* is expected in the first quarter of 2009. The Prosecution projects a marked increase in workload for the Appeals Division beginning in the second half of 2009 with the trial judgement of the second multi-accused case, *Popović et al.* and two other senior leadership cases, *Gotovina et al.* and *Šešelj*. The Appeals Division will then have a continuing inventory of more than 20 appeals cases. The Prosecution has established a staffing plan which allocates resources to meet the projected increased workload.

International cooperation

26. In order to fulfil its mandate, during the reporting period the Office of the Prosecutor continued to seek the full cooperation of States of the former Yugoslavia and other States, as required under Article 29 of the Statute of the Tribunal.

Cooperation from States of the former Yugoslavia

27. Cooperation from States of the former Yugoslavia remains vital in several areas: access to archives and the provision of documents; access to and protection of witnesses; and the search for, arrest and transfer of the remaining two fugitives, including taking measures against those who continue to support them.

28. To seek their cooperation in these areas, the Prosecutor met political and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina during the reporting period. To achieve results in the time frame of the ongoing trials it is crucial to maintain a dialogue with key officials at both the State and working levels and further develop the existing partnership with national prosecution offices.

Cooperation of Serbia

29. During the reporting period, Serbia has made substantial progress in its cooperation with the Office of the Prosecutor.

30. The assistance provided by Serbia during the reporting period in terms of access to archives and the provision of documents has generally improved. Serbia's National Council for Cooperation with the Tribunal has played a key role in facilitating the provision of documents. As a result, Serbia has provided timely responses to the majority of the Office of the Prosecutor's requests for assistance. Some progress has also been achieved in obtaining access to State security agency archives. The Office of the Prosecutor is currently working closely with the

authorities to ensure full access to the relevant documents. However, a limited number of issues remain to be addressed. In particular, for over a year, the Office of the Prosecutor has sought access to certain key military documents for its case in the trial against Momčilo Perišić. In July 2008, the Court ordered Serbia, under Rule 54 *bis* to produce these documents. After protracted proceedings, Serbia submitted a response that the Prosecutor considers to be inadequate and incomplete. The Prosecutor hopes that these documents will be made available soon. Serbia's assistance in providing documents and archival material will remain of paramount importance during the upcoming senior leadership trials.

31. Although the Office of the Prosecutor, the Registry's Victims and Witnesses Section and the local authorities in Serbia are working together on the issue, witness interference remains of serious concern. The Office of the Prosecutor acknowledges that the relevant authorities have adequately responded to its requests in this regard. Still, witnesses in some cases have been threatened and have failed to appear to testify on a voluntary basis. Because of the serious questions about the safety of witnesses in Serbia, the Office of the Prosecutor, together with the Registry's Victims and Witnesses Section, will continue to pursue closer cooperation with the Serbian authorities to resolve these questions. The authorities are encouraged to contribute to creating an atmosphere that would facilitate the appearance of witnesses in current and future trials. Experience has shown that Investigative Judges in Serbia can play an effective role in securing the testimony and attendance of reluctant witnesses.

32. The most critical area of cooperation remains the apprehension of fugitives. The Prosecutor recognizes the significant contribution of the National Security Council and the Action Team in charge of tracking fugitives. On 11 June 2008, the authorities of Serbia arrested Stojan Župljanin. He was transferred to The Hague on 21 June 2008. On 21 July 2008, the Office of the Prosecutor was informed of the arrest of Radovan Karadžić. He was transferred to The Hague on 30 July 2008. These two latest arrests represent important milestones in Serbia's cooperation with the Office of the Prosecutor. The arrests were carried out by the authorities of Serbia and were the result of improved effective leadership and coordination between political and judicial authorities, and security services.

33. Two fugitives, Ratko Mladić and Goran Hadžić, remain at large. The agencies in charge of tracking fugitives have increased their efforts and are currently conducting more active and widespread search operations against the fugitives and their support networks. Planning and coordination between different security services, which was problematic in the past, have improved. However, the work of the present authorities is complicated by the need to overcome shortcomings of the previous management of the civilian security services, in particular, their failure to analyse and act upon information obtained.

34. During the last visit of the Prosecutor to Serbia on 17 and 18 November 2008, the authorities presented operational plans to locate and arrest the fugitives. Should these plans be successfully implemented, the analytical capacity reinforced, and necessary political support maintained, additional results could be achieved. Therefore, the Office of the Prosecutor will continue to work closely with the authorities in the hope of achieving more positive results in the coming months.

Cooperation of Bosnia and Herzegovina

35. The authorities of Bosnia and Herzegovina continued to grant access to Government archives and to provide documents requested. Moreover, the authorities continued to provide adequate responses to requests for assistance and facilitate the appearance of witnesses before the Tribunal.

36. The Office of the Prosecutor encourages law enforcement and judicial authorities of Bosnia and Herzegovina to take necessary measures against those engaged in helping the remaining fugitives evade justice or otherwise obstruct the effective implementation of the Tribunal's mandate.

37. The Office of the Prosecutor hopes that Bosnia and Herzegovina's current political and structural difficulties will not negatively impact on the cooperation it is required to provide.

Cooperation of Croatia

38. During the reporting period, the majority of requests for assistance addressed to Croatia have been answered in a timely manner. However, the Office of the Prosecutor requested Croatia to grant access to certain key Government archives and produce documents in the *Gotovina et al.* case. After failed attempts during the past eighteen months to obtain these documents, at the request of the Office of the Prosecutor, the Trial Chamber ordered Croatia to provide a detailed report of investigative steps undertaken to locate the requested documentation and the results obtained. In response to the Chamber's order, Croatia provided a report and supporting documents, only some of which are relevant. Key documents remain unaccounted for. The Office of the Prosecutor considers that the administrative investigation and reported steps taken to locate these documents are not satisfactory. The matter remains before the court. As the Prosecution case is nearing its completion, the Office of the Prosecutor urges Croatia to take all additional steps to meet its obligations fully.

Cooperation from other States and organizations

39. The Office of the Prosecutor continues to rely on States and international organizations to provide documents and information required for trials and appeals. It is important that States and international organizations continue to insist on the arrest of the remaining fugitives.

40. As previously reported, the Office of the Prosecutor has encountered serious problems related to the protection of witnesses. The Office of the Prosecutor relies heavily on the international community's assistance in ensuring the safety of witnesses and, if necessary, their relocation.

41. The Office of the Prosecutor appreciates the support provided by international and regional organizations such as the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and non-governmental organizations, including those active in the former Yugoslavia. Their support will continue to be crucial as the work of the Tribunal progresses.

The transfer of cases and investigative material to national authorities and the transition to domestic prosecution

42. The transfer of investigative case files and material to competent national jurisdictions is a key component of the Tribunal's completion strategy. Moreover, the Office of the Prosecutor continues to support national courts and prosecution services, by facilitating access to information and evidence available in The Hague.

Rule 11 bis Cases

43. As reported previously, six cases have been transferred to Bosnia and Herzegovina, one case has been transferred to Croatia and one case has been transferred to Serbia, pursuant to Rule 11 *bis*. At present, Rule 11 *bis* transfer procedures have been fully used and no further cases appear suitable for transfer.

44. Prosecutions before national courts are proceeding, and in a number of transferred cases convictions have been obtained and sentences imposed. Where necessary, the Office of the Prosecutor continues to assist and work closely with national authorities.

45. On behalf of the Office of the Prosecutor, the OSCE continues to monitor trial and appeal proceedings in cases transferred to Croatia and Bosnia and Herzegovina. The OSCE provides regular reports on ongoing proceedings in these cases to the Office of the Prosecutor, which serve as a basis for the Prosecutor's progress reports to the Tribunal's Judges.

Transfer of investigative material to national authorities

46. During the reporting period, the Office of the Prosecutor continued to work closely with State prosecutors, to whom investigative material was sent. The Office of the Prosecutor has also maintained positive working relationships with the Offices of the State Prosecutor in Zagreb and Sarajevo and the War Crimes Prosecutor in Belgrade.

47. The Transition Team in the Office of the Prosecutor has been strengthened and continues the compilation and preparation of investigative material for transfer to States in the region.

48. In relation to Bosnia and Herzegovina, by the end of the current reporting period, the Office of the Prosecutor had handed over investigative material regarding a total of 16 suspects covering seven municipalities. The Office of the Prosecutor is finalizing the transfer of investigative material in relation to an additional 20 suspects for crimes committed in seven cases. All material should be transmitted to Bosnia and Herzegovina in 2009. Extensive follow-up work will continue to be provided by the Office of the Prosecutor once the State Prosecutor's Office in Bosnia and Herzegovina has had an opportunity to review and assess the transferred material.

49. No new case files have been sent to Croatia or Serbia during the reporting period.

50. If the International Tribunal is to achieve the positive completion of its mandate, it is important that transition work and the transfer of cases continues. The Prosecutor therefore supports international and national efforts to strengthen the Special Department for War Crimes of the State Court of Bosnia and Herzegovina.

The failure to do so could have a serious negative impact on ongoing and upcoming trials, including those case files transferred by the Tribunal. Efforts to strengthen the fragile judicial system in Bosnia and Herzegovina would also be jeopardized.

51. As part of the transfer of cases, the Prosecution will transmit to the State Court in Bosnia and Herzegovina charges not proceeded with or removed from the Tribunal's indictments. These remain outstanding and merit prosecution in their own right.

Requests for assistance from national judicial authorities

52. The Office of the Prosecutor responded to numerous requests for assistance submitted by national judicial authorities in the former Yugoslavia, thereby providing support to ongoing investigations and pending cases. Some of those investigations are closely linked with cases against suspects tried before the International Tribunal. Since the submission of the last report, the Office of the Prosecutor has responded to a total of 57 requests for assistance from authorities in the former Yugoslavia investigating and prosecuting war crimes (46 from Bosnia and Herzegovina, including a number of requests from the Criminal Defence Section at the State Court of Bosnia and Herzegovina, six from Croatia, four from Serbia and one from Montenegro).

53. It should be noted that there has been an increase in requests originating from other States investigating war crimes committed in the former Yugoslavia. The Office of the Prosecutor responded to six requests for assistance from other States during the same time period. The requests concerned the provision of documents and availability of staff of the International Tribunal to testify in domestic trials.

54. The Office of the Prosecutor also handled applications from States of the former Yugoslavia for variations of protective measures for witnesses ordered by the Tribunal under Rule 75(H). It is to be expected that the number of such applications will increase in the future.

55. Moreover, delegations from prosecutor's offices, mainly from the countries of the former Yugoslavia, continue to visit the Office of the Prosecutor to address specific requests for assistance and attend comprehensive training sessions.

Capacity-building efforts and inter-State regional cooperation

56. The successful transition to the domestic prosecution of serious violations of international humanitarian law depends upon States having criminal justice systems with the capacity to deal with cases which the International Tribunal cannot prosecute. The Office of the Prosecutor, sometimes with Chambers and Registry, therefore continues to build the capacity of its national counterparts to deal with these specialized and complex prosecutions. The focus of the Office of the Prosecutor remains on the effective partnership with prosecutors and courts in the region.

57. During the reporting period the Office of the Prosecutor has been exploring funding possibilities for establishing a programme under which visiting professionals from the former Yugoslavia would be integrated into the Office of the Prosecutor in The Hague for a period of time. These professionals would have access to documents and would have the opportunity to consult regularly with trial teams. Such arrangements would complement the already established programme

allowing interns from the region to work in the Office of the Prosecutor for periods of three to six months.

58. Efforts to ensure improved regional cooperation and sharing of information between offices in the region continue. The Office of the Prosecutor continuously supports and encourages these efforts. Increased coordination is required in order to develop tools and mechanisms to avoid parallel proceedings. The Office of the Prosecutor remains strongly engaged to support such initiatives at the regional level.

59. Moreover, the Office of the Prosecutor participates in the meetings of the European Network of Contact Points on Genocide, Crimes against Humanity and War Crimes.

60. As previously reported, obstacles to inter-State judicial cooperation are the lack of extradition agreements between States of the former Yugoslavia and legal barriers which prevent the transfer of war crimes proceedings between these States. In order to address the resulting impunity gap, these issues should urgently be addressed by all authorities concerned.

Management of resources

61. The timely and efficient completion of trials and appeals remains the top priority of the Office of the Prosecutor. The recent arrests of Župljanin and Karadžić make it clear that the Office of the Prosecutor will need to continue to function at full capacity throughout 2009. A reduction in staffing levels and non-post items can be expected thereafter and management is already planning for the eventual downsizing of the office.

62. As the completion of the Tribunal's work draws near, the retention of highly qualified staff members in the Office of the Prosecutor remains critical to the successful completion of trials and appeals. Staff are beginning to leave the institution because they realize that they must now seek longer term career opportunities. The number doing so because of the completion strategy is bound to increase. The loss of institutional specialized knowledge and the difficulty in hiring experienced staff to complete remaining trials may impact on the Prosecutor's ability to meet his commitments in completing the Tribunal's work. It becomes increasingly difficult to recruit replacement staff, as the time available for them to develop the necessary knowledge and skills is reduced. Therefore, with the President and the Registrar, the Prosecutor supports initiatives to find ways to retain qualified staff until the completion of the Tribunal's mandate.

63. In close consultation with the President and Registrar, the Prosecutor remains engaged in discussion on the establishment of an international residual mechanism and the future location of the Tribunal's archives. Consultations in this regard continue with the Security Council.

Conclusion

64. During the last six months, the Office of the Prosecutor has maintained its focus on the completion of its mandate. Considerable progress has been made in trials: by advancing the multi-leadership cases; by narrowing the scope of prosecutions; and by presenting evidence more efficiently. State cooperation has improved, but there do remain a number of outstanding issues, notably concerning the production of documents and the arrest of fugitives. These external factors

continue to have an important bearing on the dates by which the Tribunal will be able to complete its programme of trials and appeals.

65. Interaction with national prosecutors in the former Yugoslavia continues to develop, as do efforts to transfer know-how and help build the capacity of national courts.

66. Although the Prosecutor's principal obligation is to maintain the quality and progress of prosecution cases before the Tribunal, the Office of the Prosecutor is managing its resources with a view to the eventual downsizing of its staff and the design of a future residual international mechanism.

67. In all of these endeavours, the Prosecutor relies upon, and hopes to retain, the continuing support of the international community and especially of the Security Council of the United Nations.

Enclosure I

1. Persons Convicted or Acquitted after Trial between 16 May 2008 – 11 November 2008 (1)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1.	Rasim Delić	Commander of the Main Staff of the Army of BiH	03-Mar-05	15 September 2008 Sentenced to 3 years of imprisonment
2.	Ljube Boškoski Johan Tarčulovski	Minister of Interior of FYROM Presidential Security Officer	01-Apr-05 21-Mar-05	10 July 2008 Acquitted Sentenced to 12 years of imprisonment

2. Persons Pleading Guilty between 16 May 2008 – 11 November 2008 (0)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
No Guilty Pleas				

3. Persons Convicted of Contempt between 16 May 2008 – 11 November 2008 (1)			
Case	**Name**	**Initial Appearance**	**Judgement**
1.	Baton Haxhiu	21 May 2008	24 July 2008 Sentenced to a fine of 7.000 Euros

Legend
ABiH: Army of Bosnia and Herzegovina
FYROM: Former Yugoslav Republic of Macedonia

Enclosure II

1. Trials in Progress 16 May 2008 – 11 November 2008 (26 accused- 7 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1.	Jadranko Prlić	President, "Herceg-Bosna"	6-Apr-04	"Herceg-Bosna" Trial commenced 26 April 2006
	Bruno Stojić	Head Department of Defence, "Herceg-Bosna"		
	Slobodan Praljak	Assistant Minister of Defence, "Herceg-Bosna"		
	Milivoj Petković	Commander, HVO		
	Valentin Ćorić	Chief of Military Police Administration, HVO		
	Berislav Pušić	Military Police Commanding Officer, HVO		
2.	Dragoljub Ojdanić	Chief of Staff, VJ	26-Apr-02	"Kosovo" Trial Commenced 10 July 2006- *Closing arguments were presented on 27 August and judgement writing is currently in progress.*
	Nikola Šainović	Deputy Prime Minister, FRY	3-May-02	
	Milan Milutinović	President Republic of Serbia	27-Jan-03	
	Vladimir Lazarević	Commander, Pristina Corps, VJ, Kosovo	7-Feb-05	
	Sreten Lukić	Head Staff, Serbian Ministry of Internal Affairs, VJ, Kosovo	6-Apr-05	
	Nebojša Pavković	General, Commander 3rd VJ Army, Kosovo	25-Apr-05	
3.	Ljubiša Beara	Colonel, Chief of Security, VRS	12-Oct-04	"Srebrenica" Trial Commenced 14 July 2006
	Drago Nikolić	Chief of Security, Drina Corps, VRS	23-Mar-05	
	Ljubomir Borovčanin	Deputy Commander, Ministry of Interior Special Police Brigade, RS	7-Apr-05	
	Vujadin Popović	Lt. Colonel, Assistant Commander, Drina Corps, VRS	18-Apr-05	
	Vinko Pandurević	Commander, Zvornik Brigade, VRS	31-Mar-05	
	Milan Gvero	Assistant Commander, VRS	2-Mar-05	
	Radivoje Miletić	Chief of Operations, Deputy Chief of Staff, VRS	2-Mar-05	
4.	Vojislav Šešelj	President, SRS	26-Feb-03	Trial Commenced 7 November 2007

5.	Ante Gotovina	Commander, Split Military District, HV	12-Dec-05	Trial Commenced 11 March 2008
	Ivan Čermak	Assistant Minister of Defence, Commander of Military Police, Croatia	12-Mar-04	
	Mladen Markač	Special Police Commander, Croatia	12-Mar-04	
6.	Momčilo Perišić	Chief of General Staff, VJ	9-Mar-05	Trial Commenced on 2 October 2008
7.	Sredoje Lukić	Member, Serb paramilitary unit, BiH	20-Sept-05	Trial Commenced on 9 July 2008.
	Milan Lukić		24-Feb-06	

Legend:

FRY:	*Federal Republic of Yugoslavia*
Herceg-Bosna:	*Croatian Republic of Herceg-Bosna*
HVO:	*Croatian Defence Council*
RS:	*Republika Srpska*
VRS:	*Bosnian Serb Army*
VJ:	*Armed Forces of the Federal Republic of Yugoslavia*
FYROM:	*Former Yugoslav Republic of Macedonia*
BiH:	*Bosnia and Herzegovina*
SRS:	*Serbian Radical Party*
HV:	*Croatian Army*

Enclosure III

1. Arrivals at the Tribunal between 16 May 2008 – 11 November 2008 (2)					
	Name	**Former Title**	**Place of Crime**	**Arrival Date**	**Initial Appearance**
1.	Radovan Karadžić	President, RS	BiH	30-Jul-08	31-Jul-08
2.	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	Krajina, Croatia	21-Jun-08	21-Jun-08
Total Arrivals: 2					

2. Remaining Fugitives between 16 May 2008 – 11 November 2008 (2)				
	Name	**Former Title**	**Place of Crime**	**Date of Indictment**
1.	Ratko Mladić	Commander, Main Staff, VRS	BiH	25-Jul-95
2.	Goran Hadžić	President, "SAO SBWS"	Croatia	28-May-04
Total Remaining Indictees: 2				

Legend:
RS: Republika Srpska
VRS: Bosnian Serb Army
SAO SBWS: Serbian Autonomous District, Slavonia Baranja and Western Srem

Enclosure IV

1. Accused Awaiting Trial for the Period 16 May 2008 – 11 November 2008 (5 accused, 4 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1.	Zdravko Tolimir	Assistant Commander for Intelligence and Security of the Bosnian Serb Army	04-Jun-07
2.	Vlastimir Đorđević	Assistant Minister of the Serbian Ministry of Internal Affairs (MUP), Chief of the Public Security Department of the MUP	19-Jun-07
3.	Mićo Stanišić	Minister, Internal Affairs, RS	17-Mar-05
	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	21-Jun-08
4.	Radovan Karadžić	President, RS	31-Jul-08

Legend:
VJ: *Armed Forces of the Federal Republic of Yugoslavia*
RS: *Republika Srpska*
BiH: *Bosnia and Herzegovina*

Enclosure V

1. Accused Awaiting Resumption of Trial: (2 accused, 1 case)			
Case	**Name**	**Former Title**	**Initial Appearance**
1.	Franko Simatović	Commander, Special Operations Unit, State Security Services ("DB"), Republic of Serbia	2-Jun-03
	Jovica Stanišić	Head, State Security Services ("DB"), Republic of Serbia	12-Jun-03
Trial had commenced on 29 April 2008, however, pursuant to Appeals Chamber decision of 16 May 2008, the proceedings were adjourned.			

Legend:
DB: State Security Services

Working document